



BDO Seidman, LLP
Accountants and Consultants

October 2007

Federal Tax Alert

Subject: **Requesting Relief for Late S Corp and Entity Classification Elections**

The Tax Practice at **BDO Seidman, LLP** is among the largest tax advisory practices in the United States. With 35 offices and more than 300 independent alliance firm locations in the United States, BDO Seidman has the bench strength and coverage to serve you.

For more information, please contact:

Jack Frame
BDO Seidman, LLP
330 Madison Avenue
New York, NY 10017
Phone: 212-885-8125
jframe@bdo.com

To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.

Summary

The IRS has provided an additional simplified method for requesting relief for late-filed S corporation elections as well as late-filed corporate classification elections in conjunction with S elections.

Affecting

Taxpayers using S corporation and entity-classification elections in their tax planning.

Details

On October 9th, the Internal Revenue Service added Rev. Proc. 2007-62 to Internal Revenue Bulletin 2007-41. The procedure provides an additional simplified method for taxpayers to request relief for late S corporation elections, and also provided a simplified method for taxpayers to request relief for a late S corporation election and late corporate classification election intended to be effective on the same date.

These methods are provided in addition to those provided by Rev. Proc. 2003-43 and Rev. Proc. 2004-48, which have been supplemented, as well as the letter ruling process ordinarily used to obtain relief for late elections.¹

The new simplified methods should eliminate some of the headaches inherent in tax structuring when either an S corporation election, or an election by an eligible entity to be treated as a corporation effective for the same date as an S corporation election, has not been timely made. The process is improved to the extent that the taxpayer can make one combined filing of both the Form 1120S and the Form 2553, eliminating the risk that Form 1120S will be rejected by the Service while consideration of the late Form 2553 is pending. Further, user fees do not apply to these methods.

Simplified Method for Requesting Relief for Late-Filed S Corporation Elections

Qualifying entities may request relief by filing with the applicable office a properly completed Form 2553 along with a Form 1120S for
(continues on next page)

the first taxable year that S corporation status was intended. Form 2553 must include a statement identifying reasonable cause for the failure to file the S corporation election in a timely manner. IRS also noted that the Form 2553 will be modified to allow for inclusion of such a statement.

If all of the following apply, generally the procedure will permit an entity to be granted relief for a late S corporation election:

- the entity fails to qualify on the first day that status was desired solely because of the failure to timely file Form 2553 with the applicable Internal Revenue Service Center;
- it has reasonable cause for the failure to timely file Form 2553;
- it has not filed a tax return for the first taxable year in which the election was intended;
- its application for relief is filed no later than six months after the due date of the tax return, excluding extensions, for the first taxable year in which the election was intended; and
- no taxpayer whose tax liability or return would be affected by the election, including all of its shareholders, has reported inconsistently with the S corporation election on a return for the year in which the election was intended.

Late Corporate Classification Elections

Qualifying entities may request relief by filing a properly completed Form 2553 along with a Form 1120S for the first taxable year S corporation status was intended. This is especially important when an unincorporated organization (an eligible entity, under the check-the-box rules) is making an S corporation election. When Form 2553 is timely filed, the classification election is automatic. Treas. Reg. §301.7701-3(c)(1)(v)(C). Therefore, a late-filed Form 2553 not only puts its S corporation election in jeopardy, but its classification election as well.²

Under the new procedure the Form 2553 must include a statement explaining the reasons for failure to timely file the S corporation election in combination with a corporate classification election, when all of the following apply:

- the entity is an eligible entity as defined in Reg. §301.7701-3(a);
- it intended to be classified as a corporation as of the intended effective date of the S corporation status;
- it fails to qualify as a corporation solely because Form 8832 was not timely filed or was not deemed to have been filed under Reg. §301.7701-3(c)(1)(v)(C);
- it fails to qualify as an S corporation on the intended effective date solely because the S corporation election was not timely filed pursuant to IRC §1362(b);
- it has reasonable cause for the failure to timely file Form 2553 and Form 8832;
- it has not filed a tax return for the first taxable year in which the election was intended;
- the application for relief is filed no later than six months after the due date of the S corporation return, excluding extensions, for the first taxable year in which the election was intended; and
- no taxpayer whose tax liability or return would be affected by the election, including all of its shareholders, has reported inconsistently with the S corporation election on a return for the year in which the election was intended.

Rev. Proc. 2007-62 applies to S corporation elections and corporate classification elections intended to be effective for taxable years that end on or after December 31, 2007.

¹ Taxpayers that do not meet the requirements for using the methods outlined under Rev. Proc. 2007-62 may still seek relief under Rev. Proc. 2003-43 and Rev. Proc. 2004-48, or via IRC §1362(b)(5).

² This procedure does not apply to any other type of Form 8832 filing.